

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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Common Carrier Bureau  
Network Service Division  
Office of the Chief

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Petition by the New York State Department of  
Public Service for Additional Delegated Authority  
to Implement Number Conservation Measures

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NSD File No. L-99-21

CC DOCKET 96-98

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COMMENTS OF  
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Office of Secretary

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## SUMMARY

Level 3 Communications, Inc. ("Level 3") commends the New York Department of Public Service and the Public Service Commission (collectively, the "NYPSC") for their initiative in attempting to address the problems associated with NXX code shortages. Several of the NYPSC's proposals could prove helpful in making better use of the numbering resources currently deployed in the telecommunications market. For example, allowing the NYPSC to reclaim inactive NXX codes after an established period of time and pursuant to well-defined safeguards and procedures will promote greater accessibility to a carrier's reserves of NXX codes that might otherwise be unavailable for use by other carriers. Similarly, because the NYPSC may be best able to determine when additional rationing measures are necessary in a given market, giving it the ability to extend or modify the use of NXX code rationing procedures would be reasonable and even desirable (as long as appropriate safeguards are in place). Finally, giving the NYPSC the authority to compel the return of inactive NXX codes would appear necessary if the measures discussed above are to be effective.

There are number of respects, however, in which Level 3 believes that the NYPSC's Petition would undermine the establishment of national numbering administration procedures. Thousands block number pooling, individual number pooling, and unassigned number porting are all under consideration in an open Common Carrier Bureau proceeding, and all require further discussion, development, and uniform resolution before they are turned over to states or to the numbering administrators for implementation.

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

Petition by the New York State Department of	)	
Public Service for Additional Delegated Authority	)	NSD File No. L-99-21
to Implement Number Conservation Measures	)	

**COMMENTS OF  
LEVEL 3 COMMUNICATIONS, INC.**

Level 3 Communications, Inc. ("Level 3"), by undersigned counsel and pursuant to the Common Carrier Bureau's March 5 Public Notice,<sup>1</sup> hereby submits its Comments in the above-captioned proceeding.

**I. INTRODUCTION**

Level 3 is a communications and information services company that is building an advanced Internet Protocol technology-based network across the U.S., connecting 25 cities. Level 3's network is scheduled to be completed in phases by 2001. The company also plans to build local networks in cities across the country and to interconnect those networks with its national long distance network. As a facilities-based provider of local services, Level 3 is dependent upon adequate access to numbering resources to serve customers and expand the geographic scope of its operations.

Level 3 welcomes the initiative on the part of the New York Department of Public Service and the Public Service Commission (collectively, the "NYPSC") in attempting to address the problems associated with NXX code shortages. Indeed, carriers' inability to obtain NXX codes and telephone numbers is one of the most significant, artificial barriers to competitive entry and

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<sup>1</sup> *Common Carrier Bureau Seeks Comment on New York Department of Public Service Petition for Additional Authority to Implement Number Conservation Measures*, NSD File No. L-99-21, DA 99-462, Public Notice (rel. Mar. 5, 1999).

expansion. Level 3 agrees that many of the proposed measures could in fact remedy the exhaust situations currently plaguing several Numbering Plan Areas ("NPAs").

There are several other respects, however, in which Level 3 believes that the NYPSC's approach to address the NXX code shortages is inappropriate. Rather than looking to novel measures as a panacea for code exhaust, the NYPSC should use more tested and reliable means of increasing access to telephone numbers. There is no guarantee that these alternative conservation measures – such as number pooling and unassigned number porting – will work, and it would be inefficient and burdensome for carriers to comply with what could possibly be 50 separate kinds of pooling mechanisms. Level 3 believes that only after effective uniform federal solutions to these alternative conservation measures have been developed and tested should the states be encouraged to implement them.

## **II. THE PETITION PROPOSES A NUMBER OF MEASURES THAT THE NYPSC COULD EFFECTIVELY UTILIZE TO ADDRESS NXX CODE EXHAUST.**

Level 3 supports the following number conservation measures for which the NYPSC seeks delegated implementation authority from the Commission.

### **A. Reclamation of Inactive or Unused NXX Codes**

Level 3 believes that allowing the NYPSC to reclaim inactive NXX codes from carriers – particularly Bell Atlantic, with its supply of reserved NXX codes<sup>2</sup> – is a reasonable and technically

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<sup>2</sup> Level 3 notes that the similar numbering administration petition filed by the Massachusetts Department of Telecommunications and Energy on February 17, 1999 seeks not only to reclaim "inactive" codes, but makes specific reference to an investigation and reclamation of NXX codes that have been held by Bell Atlantic for "testing, special codes, and other purposes." Massachusetts Petition, at 7. Granting this kind of authority to the NYPSC as well would provide an effective tool in optimizing number utilization.

feasible means of making more efficient use of numbering resources. The primary question, however, comes in the timing of such reclamation.<sup>3</sup> It is essential that carriers not be forced to return NXX codes prematurely if their business plans call for the use of those codes in the foreseeable future. In fact, many competitive local exchange carriers ("CLECs") may place orders for NXX codes months in advance of entering a rate center in order to ensure that the numbering resources will be readily available once customer sales begin. CLECs may also decide to assign telephone numbers to a customer months in advance of serving that customer as part of their marketing efforts and business plans. The Commission should ensure that if the NYPSC is given authority to reclaim inactive or unneeded NXX codes, appropriate safeguards are in place so that the state or numbering administrator is not given an inordinate amount of power over carriers' business plans. Among other things, the Commission may want to direct that the NYPSC may only take action to reclaim an unused NXX code if the carrier has held the code for at least one year.<sup>4</sup>

Similar concerns about regulators dictating carrier business plans should prevent the state from reclaiming codes that are "no longer needed." Level 3 does not believe that a state commission is in the best position to determine when a carrier may need a particular NXX code because of anticipated customer demand. In fact, Level 3's experience in Massachusetts indicates that carriers

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<sup>3</sup> NYPSC Petition, at 13.

<sup>4</sup> Level 3 recognizes that current industry numbering guidelines provide for carriers to return NXX codes to the numbering administrator if a code is no longer needed or is not activated within six months. In some cases, however, customer demand (or lack thereof) may cause a carrier to delay activating until several more months have passed. In light of the uncertainty of customer demand at times and the voluntary nature of the NXX code return set forth in the numbering guidelines, the NYPSC should not take enforcement action to reclaim an inactive code until at least one year has passed.

themselves are in the best position to judge when and which codes can be returned. Level 3 has just recently completed an internal review of its operations following its acquisition of another carrier, and is in the process of returning a sizeable number of NXX codes in Massachusetts originally held by that carrier. Thus, Level 3 believes that carriers will and already do return NXX codes when they are "no longer needed." The Commission should therefore make clear that any delegation of authority to the NYPSC with respect to reclamation of NXX codes only applies to those codes that have been inactive, and not to any codes that are subjectively determined by the state regulator to be unneeded.

**B. Extension or Modification of Rationing Procedures**

Providing the NYPSC with expanded authority to administer NXX code rationing efforts appears reasonable and even desirable. Unlike other number conservation measures discussed below, Level 3 does not believe that rationing requires uniform implementation or further testing and development at the federal level. Indeed, as the NYPSC points out, it may be in the best position to judge when rationing will be needed and its impact upon competition in the local exchange market.<sup>5</sup>

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<sup>5</sup> NYPSC Petition, at 15 (citing *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392 (1996), at ¶ 272). As a precautionary measure, however, the Commission should make clear that if a carrier believes that NYPSC revisions to established industry rationing procedures are unjust or unreasonable, that carrier may seek expedited relief (on a 30-day basis) from the Common Carrier Bureau to stay or even vacate the proposed revisions to the rationing procedures.

### **C. Enforcement Authority**

Level 3 agrees with the NYPSC that under certain circumstances, self-policing may not be effective in ensuring efficient use of numbering resources. For example, the NYPSC may need the authority to compel the return of NXX codes that have been held inactive by a carrier for more than one year. As explained in greater detail below, number pooling and unassigned number porting are measures that require greater development at the federal level before they can be turned over to the states for administration and enforcement. They also involve the implementation and use of number portability – a matter that is clearly within this Commission’s jurisdiction and over which the states cannot exercise any authority.<sup>6</sup> Thus, until the Commission has completed its analysis of these measures and promulgated strict guidelines governing their use, it should not allow the NYPSC to implement or enforce compliance with these kinds of conservation measures.

### **III. STATES SHOULD NOT BE PERMITTED TO UTILIZE UNTESTED METHODS OF NUMBER CONSERVATION THAT ARE SUBJECT TO FURTHER DISCUSSION, DEVELOPMENT, AND STANDARDIZATION.**

Although Level 3 supports several aspects of the NYPSC’s Petition, Level 3 believes the Petition should be denied in part because it would undermine national efforts to develop uniform number administration procedures.

#### **A. Thousands Block Number Pooling**

The NYPSC proposes to implement a mandatory pooling regime because it finds that its voluntary pooling trials in the 212 and 516 NPAs have not produced the desired results in terms of

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<sup>6</sup> The NANC Report makes clear in several instances that the states should not be given authority to compel the implementation of local number portability even if they are granted authority to administer pooling.



carrier participation or in delaying code exhaust.<sup>7</sup> While Level 3 agrees with the NYPSC that thousands block number pooling may provide a "valuable tool" in making more efficient use of telephone numbers in the future,<sup>8</sup> much debate, discussion, and implementation remains before pooling can be considered an appropriate number conservation mechanism to which carriers in the marketplace should be bound. For example, the number optimization Report filed with the Commission by the North American Numbering Council ("NANC") on October 21, 1998 sets forth an "Implementation Timeline" which indicates that there are several pooling administration steps, system modifications, and cost recovery decisions that are still being made or have yet to be addressed.<sup>9</sup> The Commission itself has targeted the fourth quarter of 1999 for the working implementation of thousands block number pooling.<sup>10</sup> Moreover, the conclusions set forth in the NANC Report – such as the establishment of a 10% block contamination threshold or the block assignment guidelines – are still the subject of an open file with the Common Carrier Bureau in which comments were filed little more than three months ago.<sup>11</sup> The competitive implications of mandatory pooling on carriers that are not yet required to implement Local Number Portability also

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<sup>7</sup> NYPSC Petition, at 6-7.

<sup>8</sup> *See id.* at 8.

<sup>9</sup> *See* Number Resource Optimization Working Group, *Modified Report to the North American Numbering Council on Number Optimization Methods* (Oct. 20, 1998) ("NANC Report"), at 97-103.

<sup>10</sup> *Id.* at 105.

<sup>11</sup> *See Common Carrier Bureau Seeks Comment on North American Numbering Council Report Concerning Telephone Number Pooling and Other Optimization Measures*, NSD File No. L-98-134, DA 98-2265, Public Notice (rel. Nov. 6, 1998). Comments on the NANC Report were filed December 21, 1998.

merit careful consideration and resolution before states are given the ability to compel participation in a pooling program. Finally, the NYPSC does not appear to have addressed how carriers will recover the costs associated with pooling participation.

The Commission should therefore ensure that reasonable, carefully considered, well developed pooling guidelines are finalized before the states are given authority to compel participation in pooling mechanisms.<sup>12</sup> In the end, any mandatory pooling mechanism must first be demonstrated to be technically feasible and operationally sound, so that carriers are able to obtain and retain numbers without fear that the numbers they contribute to a pooling mechanism are effectively lost forever. The Commission already has a proceeding underway to arrive at just such a result, and it should not prejudge or "short-circuit" the outcome of the Common Carrier Bureau's open consideration of these technical, operational, economic, and competitively sensitive questions by awarding the NYPSC the ability to experiment with a mandatory pooling mechanism. Nor should the Commission give states experimental authority to compel participation in pooling regimes before it has clarified what the final national pooling guidelines should be. The prospect of 50 state governments erecting different pooling mechanisms presents a substantial technical and administrative burden for carriers. Level 3 therefore respectfully requests that the Commission decline to award the NYPSC (or any other state commission) the authority to implement a mandatory pooling mechanism until: (i) comprehensive uniform federal pooling guidelines have been finalized and implemented; (ii) pooling has been demonstrated to work in terms of providing

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<sup>12</sup> Level 3 recognizes that pooling guidelines were issued by the Industry Numbering Committee in January 1999. These guidelines do not, however, resolve conclusively the matters still open for consideration before this Commission in the context of the NANC Report.

carriers with access to thousand number blocks as needed; and (iii) carriers are ensured that they will be able to recover the costs associated with implementing a pooling mechanism.

**B. Individual Telephone Number Pooling**

The NYPSC is also seeking authority to "explore the feasibility of individual telephone number pooling (ITN) and to launch trials where and when technically feasible."<sup>13</sup> As in the case of thousands block number pooling, however, this number conservation mechanism is simply too undeveloped to allow experimentation by the states. Indeed, even the NYPSC acknowledges that "ITN pooling architecture has not been given significant priority because most number conservation efforts have focused on 1,000 block number pooling."<sup>14</sup> The NANC Report makes clear that there are a number of unresolved matters with ITN pooling. The recommendations set forth in that document are currently being considered by the Common Carrier Bureau.

Thus, Level 3 submits that the Commission should not undermine the Bureau's ongoing process and the uniform federal resolution of problems associated with ITN pooling by giving the NYPSC authority to experiment with this number conservation mechanism. Moreover, because ITN pooling involves technical, operational, economic, and competitive questions that are similar to those involved in the consideration of thousands block number pooling, Level 3 submits that ITN pooling should likewise be addressed thoroughly at the federal level before its implementation is delegated to the states. The NANC Report summarizes this best when it notes that "the architecture, provisioning methodologies, administrative procedures, and interfaces used to support ITN pooling

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<sup>13</sup> NYPSC Petition, at 9.

<sup>14</sup> *Id.*

shall be uniform nationwide."<sup>15</sup> The Commission should therefore deny the NYPSC's request for expanded authority over ITN pooling.

**C. Unassigned Number Porting**

The NYPSC requests authority to utilize unassigned number porting ("UNP") as an "interim measure until ITN pooling becomes widely available."<sup>16</sup> This number conservation mechanism – like thousands block number pooling and ITN pooling – is still in a developmental process and the subject of consideration in the Bureau's review of the NANC Report. For the same technical, operational, economic, and competitive reasons that warrant resolution of thousands block number pooling and ITN pooling at the federal level, Level 3 urges the Commission to deny the NYPSC request to implement UNP on an interim basis. The NANC Report again makes clear that the implementation of UNP should be at this point exclusively a federal question: "The provisioning methodologies, administrative procedures and interfaces used to support UNP shall be uniform nationwide."<sup>17</sup> Granting the requested relief to the NYPSC would violate this uniformity principle.

**D. Minimum Fill Rates and Utilization Surveys**

The NYPSC proposes that it be given the power to limit a carrier's ability to request new NXX codes if that carrier already holds other NXX codes with low utilization rates.<sup>18</sup> Level 3 objects to the delegation of such numbering authority because the establishment of minimum fill thresholds would artificially limit the geographic scope of carriers' operations. For example, a

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<sup>15</sup> NANC Report, at 42.

<sup>16</sup> NYPSC Petition, at 10.

<sup>17</sup> NANC Report, at 122.

<sup>18</sup> NYPSC Petition, at 12.

carrier may only serve customers in a rate center in an amount equaling 15% of its NXX code for that area. Yet the carrier may see a significant opportunity to attract a sizeable customer base in another rate center. If the carrier is denied the ability to obtain a NXX code to serve that second rate center simply because it was unable to attract enough customers in its first rate center, this creates an unjustified, and possibly unlawful, artificial barrier to entry. While the NYPSC envisions using minimum fill rates together with number pooling so that a carrier could always access telephone numbers in other rate centers without obtaining a new NXX code, Level 3 believes that mandatory pooling measures are at this point unreliable and should not be implemented in New York for the reasons identified above. Accordingly, without number pooling in place, this minimum fill rate proposal should also be rejected because it unnecessarily intrudes upon carriers' business plans and impairs their ability to expand service to New York consumers in geographic areas they do not serve.

For similar reasons, Level 3 objects to any delegation of authority that allows the NYPSC to conduct utilization surveys.<sup>19</sup> These surveys are intended by the NYPSC to determine whether a carrier is complying with the minimum fill rates and deserves another NXX code. A carrier whose utilization survey indicated that it was not meeting the NYPSC's defined minimum fill would be ineligible to receive any more NXX codes in New York. In essence, this mechanism works in tandem with the minimum fill rates to unnecessarily limit the geographic scope of a carrier's operation. Thus, the NYPSC's proposals with respect to minimum fill rates and utilization surveys would invite unwarranted regulatory interference with carrier business plans. Level 3 urges the

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<sup>19</sup> See NYPSC Petition, at 13-14.

Commission to reject these proposals along with the mandatory number pooling mechanisms discussed above.

#### IV. CONCLUSION

Level 3 commends the NYPSC for taking a proactive approach to resolving the problems of NXX code exhaust. Many of the proposals set forth by the NYPSC may ultimately assist in making much more efficient use of existing number resources. The problem, however, with some of these proposals comes in their timing and the method of implementation. Certain of the NYPSC's proposed measures simply are not ready for deployment in the market, and the testing and implementation of these measures needs to be part of a coordinated national effort. In this case, allowing the states to experiment with number pooling and related measures would only lead to inconsistency on a state-by-state basis in resolving technical, administrative, and competitive concerns. The Commission should therefore grant the NYPSC a limited delegation of authority consistent with the recommendations set forth herein, but it should otherwise proceed within the context of its own number optimization docket to establish national guidelines governing the use of thousands block number pooling, ITN pooling, UNP, and related measures.

Respectfully submitted,



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Dated: April 5, 1999

Counsel for Level 3 Communications, Inc.

## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Comments of Level 3 Communications, Inc. were served by Federal Express overnight delivery and by hand delivery on the following parties on this, the 5<sup>th</sup> day of April, 1999.

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